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MICHAEL RODAK, JR., CLERK

In The  
**Supreme Court of the United States**

October Term 1979

No. 78-1234

DAVID H. GUST,

*Petitioner,*

*vs.*

NEIL CRAMER,

*Respondent.*

**RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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**BRIEF FOR RESPONDENT**

Respondent, Neil Cramer, respectfully prays this Court to deny a writ of certiorari to review the final decision of the United States Court of Appeals for the Second Circuit, which decision was entered on December 12, 1978.

**Opinion Below**

The decision of the United States Court of Appeals unanimously affirmed the decision of the United States District Court for the Western District of New York to dismiss petitioner's complaint for failure to state a cause of action for which relief can be granted.

### Question Presented

Whether the District Court properly granted Appellee's motion for summary judgment dismissing Appellant's complaint for failure to state a cause of action for which relief can be granted?

### Statement of Facts

David H. Gust, hereinafter, petitioner, was arrested by a Sheriff's deputy on April 2, 1977 on Scottsville Road at about 12:40 P.M. The Deputy, noticing the absence of a registration tag on the trailer Mr. Gust was towing, had stopped him and asked for his license and registration. Mr. Gust refused. Again, the officer asked Mr. Gust to produce his license and registration for the trailer he was towing. Mr. Gust then asked if he would be granted immunity from any prosecution regarding anything found on the documents if he showed them. The officer informed him he was unable to do that and with Mr. Gust's third refusal to respond to his request for license and registration, the Sheriff's deputy called for assistance. Four other Deputy Sheriffs responded.

Upon a fourth request to produce his driver's license and registration, Mr. Gust was arrested and charged with the following violations of the Vehicle and Traffic Law of the State of New York.

1. Section 1102 — Failure or refusal to comply with a lawful order or direction of a Police Officer.
2. Section 375-25(a) — Inadequate splashguards on the trailer Mr. Gust was pulling.
3. Section 509-1 — Failure to have a valid New York State driver's license, and
4. Section 401-4 — Failure to have a registration for his trailer.

Mr. Gust, following a trial on June 2, 1977, was found guilty of violating Section 1102, 375-25(a) and 401-4 and not guilty of Section 509-1. At trial it was made clear that Mr. Gust was not charged with nor was he convicted of Section 507-2 which is the failure to exhibit a valid New York State driver's license.

Ten months later, on April 3, 1978, Mr. Gust appeared in Chili Town Court and presented a motion dated March 13, 1978 to vacate his conviction under Section 1102. The respondent in this action, Judge Neil Cramer, presided over the initial trial on June 2, 1977 and was again serving in his capacity as a Town Judge on April 3, 1978. Judge Cramer denied Mr. Gust's application and refused to vacate his conviction under Section 1102.

Petitioner commenced a lawsuit against defendant-appellee in the United States District Court when on July 7, 1978, Judge Burke denied petitioner's motion for summary judgment and granted defendant-appellee's motion for summary judgment dismissing plaintiff's complaint for failure to state a cause of action for which relief can be granted. The United States Court of Appeals, Second Circuit, unanimously affirmed Judge Burke's Order.

### Statement of Case

Federal jurisdiction was initially invoked under Title 28 U.S. Section 1343.

### ARGUMENT I

Except in the exercise of habeas corpus jurisdiction, Federal District Courts lack the power to sit in review of or to reverse State Court convictions absent evidence that the State Court proceedings were a sham or that the Judge deliberately acted without any jurisdiction. *Rooker v. Fidelity Trust Company*, 263 U.S.413, 416 (1923); *Atlantic C.L.R. Co. v. Engineers*, 398 U.S.281, 296 (1970).

## ARGUMENT II

There must be an underlying federal question which was raised, preserved or passed upon in the State Court. The United States Supreme Court will not decide constitutional questions raised for the first time on review of State Court decisions. *Cardinale v. State of Louisiana*, 394 U.S. 437 (1969).

## ARGUMENT III

The petitioner's remedy would have been to appeal the State Court's conviction within the allotted time. He cannot be permitted to do indirectly what he no longer can do directly. Act September 6, 1916 c.448 Section 6, 39 Stat. 726; *Voorhees v. Bank of the United States*, 10 Pet. 449 (1836).

## CONCLUSION

For the reasons stated above, respondent respectfully prays that a Petition for a writ of certiorari should be denied.

Dated: February 20, 1979.

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